Case Numbers: 2301914/2019
2308181/2020
3200826/2021

EMPLOYMENT TRIBUNALS

Claimant: **Mrs S McFarlane-Hamilton**

Respondent: **Department of Work and Pensions**

Heard at: **London South via CVP On: 14/3/2022 to 25/3/2022**

Before: **Employment Judge Wright**
Mrs F Betts
Mr S Corkerton

Representation:
Claimant: **Mr B Supiya – Community Voluntary Advocates**

Respondent: **Ms V Brown - counsel**

LIABILITY JUDGMENT

It is the unanimous Judgment of the Tribunal that the claimant's claims under the Equality Act 2010 (EQA) fail and are dismissed.

The claimant's claim of unlawful discrimination per s.19 EQA (indirect discrimination) is dismissed upon withdrawal. The claimant also withdrew allegations 1, 8, 24 and 27).

At the hearing, Mr Supiya requested written reasons. The claimant then emailed the Tribunal to say, despite Mr Supiya's request, she did not want written reasons to be produced. There was then further correspondence and the claimant then on 10/10/2022 confirmed that she required written reasons, the following reasons were produced.

REASONS

1. The claimant presented a first claim form on 17/5/2019 following a period of early conciliation which started on 14/3/2019 and ended on 28/4/2019. A second claim form was presented on 2/2/2020 and a third on 16/3/2020. The respondent resists the claims. The claimant's employment commenced on 1/4/2015[1] and she remains employed.

2. There was an agreed list of issues, which was incomplete. The claimant's protected characteristics are race (s.9 EQA) (black) and sex (s.11 EQA) (female). There was no comparator provided for the allegations of direct discrimination. The allegations of harassment did not refer to which protected characteristic was relied upon.

3. The Tribunal heard evidence from the claimant. The claimant provided witness statements from eight other witnesses. The claimant subsequently withdrew one witness and was told that two others would not be of assistance to the Tribunal in respect of the matters it had to determine. Ms Brown did not question the claimant's witnesses.

4. The respondent called 13 witnesses. They were:

    Graham Gibson
    Mark Lumsden
    Mark Paine
    Gurpreet Walia
    Chris Clack
    Wendy Squires
    Trish Frawley
    Donna Cooke
    Rob Brill
    Max Unwin
    Alan Kane
    Cheryl Crane
    Maggie Beard

[1] She has continuous service from 1987.

5. A sixteenth witness for the respondent was not called as his evidence was no longer required once the claimant withdrew some of her allegations. Mr Supiya also said that he did not need to question a further two of the respondent's witnesses.

6. There was an electronic bundle of 1880 pages. It contained unhelpful redactions. Unfortunately, the Tribunal did not receive an electronic copy of the bundle which it could access until 12.20pm on the first day of the hearing. As the hearing was being conducted via CVP it was expected that the Tribunal would have available to it an electronic bundle. The Tribunal really would expect the GLD to be able to be able to provide an accessible copy of the bundle well in advance of the hearing. As is the usual practice, the Tribunal will only read a page it was expressly taken to. As a result, there was a vast amount of documentation that was not referred to and which the Tribunal did not read. Any page number given in this Judgment is a reference to the electronic page number. Furthermore, the bundle was difficult to navigate and was not complied in a chronological order. In an electronic bundle, lack of chronology (although it is desired and was directed) is not necessarily an issue, however that depends on the index giving the page reference for each document. That was not the case in this bundle.

7. The claimant's witness statement was lengthy running to 69 pages. It contained detail about historic and other matters, but which the Tribunal would not necessarily determine as they were not put forward as an allegation or a claim. Furthermore, the claimant did not lead evidence-in-chief in respect of some of her allegations.

8. The number of witnesses had increased since the final hearing was listed at a preliminary hearing on 31/3/2021. On the 21/2/2022 the respondent made an application for the final hearing to be postponed. The reasons given were: an increased number of witnesses; and new allegations in witness evidence.

9. The parties were told on the 1/3/2022:

> 'The respondent's application for a postponement of the hearing listed for 10 days due to commence on 14/3/2022 is refused.
>
> The claim relates to events in 2019.
>
> If this final hearing was postponed, it is not likely to be able to relist it until 2024. The Tribunal does not have unlimited resources. It

has to allocate the resources it does have in accordance with the overriding objective and in fairness to other users.

Absent a successful application to amend the claim, the claimant is not able to unilaterally expand the issues in the claim. If the claimant has done so, the Tribunal Panel hearing the final claim will disregard those matters and may decline to hear from any witnesses it considers are not relevant to the pleaded matters it is to determine.

The parties were directed to exchange witness statements on 13/12/2021. It was at that point in time, when the length of the final hearing should have been reviewed, not three weeks before the hearing was due to commence.

At the preliminary hearing on 30/7/2021, both parties confirmed there were no outstanding matters from the current directions timetable.

The Tribunal may apply Rule 45 to the time allocation for each side.

The parties MUST focus on the final hearing and co-operate in order that it is effective.'

10. The parties really must turn their thoughts to the length of the final hearing at a much earlier stage in the proceedings in order that the case can be managed effectively and in accordance with the overriding objective. It is simply not good enough to reflect on the length of the final hearing some weeks beforehand and then to make a postponement application. Professionally represented parties are expected to know the constraints and difficulties which, in particular, this region has and the delay which will enviably be caused by any postponement if the final hearing.

11. There were three consolidated claims and the claimant initially made 52 allegations. She had also raised eight grievances. In view of the circumstances, the Tribunal applied Rule 45[2]. The parties were each given three days each in total for questioning the other side's witnesses.

12. Ms Brown did not use all of her allocation and Mr Supiya was given some extra time on days three and seven. The revised timetable was that Mr Supiya would complete his questions on day six (Monday 21/3/2022). Mr Supiya appeared to lack focus and was ill-prepared. Notwithstanding that,

[2] Rule 45 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013.

all was on track until the last hour of day six. Mr Supiya had approximately 55 minutes to question the final two witnesses. After a short comfort break, it took Mr Supiya over 10 minutes to rejoint the hearing (all participants had been asked to turn off their cameras and microphones). He then had connectivity problems and it was difficult for the witness to answer his questions. Furthermore, Mr Supiya questioned the witness on matters which were not their evidence (he appeared to be questioning the wrong witness). As a result of that and in order that the witness' evidence could be concluded, the Judge put the three allegations to the witness on behalf of Mr Supiya and he then confirmed he had no further questions. The Tribunal concluded for the day and asked Mr Supiya to ensure his technical problems were resolved and to be prepared to question the final witness on the morning of day seven.

13. It had been made clear to the parties, that as the final witness would be heard on the morning of day seven, the parties would then have an hour each for closing submissions, with the mid-morning break taken in-between. Ms Brown (who had asked for more time the previous day and had been refused) finished her submission at 11.30am. The usual 15 minute break was proposed. Mr Supiya then asked for an additional 15 minutes (so a 30 minute break in total). He said he need to eat as he suffered from diabetes. There was some discussion and Mr Supiya was given two options. Eventually Mr Supiya had a 30 minute break, this however meant he only then had 45 minutes for his closing submissions, not an hour. The reasons were that: Rule 45 had been applied from the outset and in order to deal with the case in its entirety, the timetable was strict; at the outset, the Tribunal had asked if any adjustments were needed; Mr Supiya had never mentioned his diabetes before and had managed on every substantial sitting day with a 15 minute break; Mr Supiya had not mentioned the need for a longer break earlier (i.e. before Ms Brown began her submissions); Ms Brown has asked for more time and had been refused; and finally, there had already been adjustments to the schedule due to Mr Supiya's technical issues (that being the reason the last witness was not heard on the sixth day). Both representatives made closing submissions. Those submissions were considered.

14. The Tribunal makes some observations in respect of credibility. Despite Mr Supiya's observations in respect of the respondent's witnesses, the Tribunal found to the contrary. The respondent's witnesses were truthful and sought to assist the Tribunal. They did not exaggerate and they accepted points which went against them (for example, Mr Paine admitted he used the words 'taking the piss' in the claimant's presence (although the claimant has never said that she was offended by the use of that word)). The Tribunal found the witnesses to be honest and if there was a

conflict in the evidence, the Tribunal preferred the evidence of the respondent's witnesses. The reason for that was that the Tribunal found the claimant to lack credibility. She was abrasive, which the Tribunal accepts may have been down to the circumstances of giving evidence via video link. It also found however, that the claimant was prone to exaggeration (for example saying and then maintaining Mr Paine was 'foaming at the mouth', which was not supported by the other witnesses). The claimant maintained other allegations during her grievances and appeals and even to this Tribunal, which were manifestly unfounded and the Tribunal would even go as far as to say mendaciously incorrect (the long-service certificate allegation).

Findings of fact

15. The claimant has continuous public sector service since 15/6/1987. She worked for the respondent until 31/3/2006 when she was made redundant. She then worked for the London Borough of Southwark (LBS) from 9/9/2006 as a temporary team leader and she became permanent on 2/4/2007.

16. The claimant's employment transferred to the respondent on 1/4/2015. The claimant chose to remain on the LBS terms and did not transfer to the respondent's terms. The Tribunal was told that numerous London local authority and home counties staff had transferred in under the Single Fraud Investigation Service (SFIS) to the respondent. This resulted in different personnel being on various and many different terms and conditions.

17. The claimant says she was subjected to improper treatment from day one. The Tribunal finds that although the claimant had other options (in one of her grievances she said she could have taken redundancy or gone into the redeployment pool), she chose to transfer to the respondent. Although she had previously been made redundant by the respondent in 2006, she remained aggrieved, due to the matters which had been raised previously. The Tribunal did not (and did not need to) hear any detail about those matters.

18. The claimant's attitude towards the respondent was summed up by PS on 5/2/2020 when she said in an email (page 1459):

> 'We both agreed that we are at a bit of a loss as to where to go next. You told me that there were days when you simply wanted to be offered some money to leave and you would do so. I hope I was

understanding of your predicament but did tell you that this was not in my gift.'

19. The claimant's allegations have not been presented in a chronological format. The Tribunal does not have time to re-order them and will take them in turn as per the list of issues. The square brackets will give both the reference from the list of issues and the allegation number. As a result, the Tribunal however considers it proportionate and in accordance with the overriding objective to address the allegations in this format, notwithstanding that the Judgment may not be easy to follow.

20. [2.2.3/allegation 25 and 6.2/allegation 37] As an act of direct discrimination and in breach of contract, the claimant did not receive a long-service certificate. One of the defects in the list of issues, is that it does not identify which protected characteristic the claimant relies upon. The respondent's amended claim breaks down identifies the protected characteristic as race (page 182). There is no comparator identified. It would seem, although it was never expressly put, that the claimant relies upon Dania Harleston (page 1550). The Tribunal was not told what Ms Harleston's race is, however in closing submissions, Mr Supiya referred to her race as being black. He then made the extraordinary submission that as Ms Harleston's race is black, that the claimant would seek to rely on a hypothetical comparator. He did not say what race the hypothetical comparator was.

21. In any event, there is a much simpler explanation in response to this allegation. The claimant was not entitled to receive a long service certificate. On the 22/5/2017 the claimant informed her acting line manager that she was entitled to a 10-year long service award (page 1636). Mr Gibson asked for a copy of the claimant's contract. In evidence, he said that due to all of the staff who had transferred in under SFIS from various different local authorities, he did not know what terms and conditions each individual member of staff was on.

22. The claimant incorrectly and the Tribunal finds deliberately, told Mr Gibson she was contractually entitled to a long service award after 10, 25 and 30 years under her local authority contract (page 1635). The claimant then compounded this misrepresentation by only sending Mr Gibson the front page of her contract, which showed her start date. The Tribunal finds that the claimant deliberately did not send the full copy of the contract so as to mislead Mr Gibson.

23. Mr Gibson quite rightly then directed the claimant to a colleague JH 'to make the necessary arrangements for your award' (page 1635) for her to take that matter up directly. Mr Gibson did not in fact refuse the award.

24. In fact, the local authority gives long service awards at 25 and 40 years (page 437) and as the claimant had not transferred onto the respondent's terms and conditions, she was not entitled to an award under its scheme (page 450).

25. When it was put to the claimant in questioning that quite simply she was wrong to suggest she was entitled to a 10 year long-service award, she conceded she 'supposed it is' [wrong] and furthermore, that the 25 years and over 30 years award 'is wrong' but that she had only just received confirmation of this at the Tribunal The Tribunal was specifically taken to the SFIS HR guidance for the respondent's line manager and specifically page 1484 which states at paragraph 3:

> 'Loyalty and Recognition
> The colleague will not be entitled to DWP Long Service Award unless they have moved on to DWP T&Cs.'

26. This is an example of how this case was conducted. The claimant was not entitled to a long-service certificate and she blatantly deceived Mr Gibson when she said that she was. Her inferred comparator was black and so that did not assist her. There is no need to rely upon a hypothetical comparator if there is an actual comparator. There must be another explanation; and here there was. The reason for the treatment was that the claimant was not entitled to certificate and she did not demonstrate that she was so entitled. To make and pursue such an allegation when all the facts are known, is completely inappropriate. This sets the scene for the remainder of the claimant's allegations.

27. [2.2.4/allegation 26] As an act of direct discrimination on the grounds of race, both Mr Gibson and Mr Paine referred to the claimant's rate of pay. There was no reference to the claimant's comparator. In her witness statement, she referred to Mr Whitehouse-Hayes, however the Tribunal was not informed what race he is nor what terms he was on (local authority and if so, the same local authority as the claimant or whether he was on the respondent's terms). The claimant does have to show she was treated less favourably because of her race than her comparator; not simply that, on her case, comments were made about her salary. Both Mr Gibson and Mr Paine accepted in questioning that due to her transferring in on more favourable terms, the claimant was paid more than them. As the claimant could not claim this was less favourable treatment because of

her race (she is higher paid), she had to turn the fact into a negative. She said that both Mr Gibson and Mr Paine made adverse comments about her pay.

28. Both Mr Gibson and Mr Paine gave a credible explanation as to why they were not concerned to find the claimant earned more than them. Mr Gibson said that he had had the opportunity for promotion, but he was content in his role and that pay had not been a motivation for him. Mr Paine said he was not motivated by money. Both men are career long civil servants and the Tribunal takes judicial notice that whilst they could most likely earn more money elsewhere (they could for example have applied to and transferred to a local authority as the claimant had done in order to earn a higher rate of pay), they did not do so. Furthermore, the Tribunal accepts that there are other benefits to working in the civil service, over and above pay. Those reasons are clearly why the civil services continues to attract candidates and why the successful ones remain in the civil service for years and like these witnesses, for decades. The Tribunal does not accept that they would have discussed pay, in the terms attributed to them in the claimant's presence.

29. If comments about pay were made (which is not accepted), they may be less favourable treatment, but it has nothing whatsoever to do with her race. The claimant has failed to discharge the burden placed upon her.

30. [2.2.6/allegation 28 and 29] This is an allegation of direct discrimination on the grounds of race (no comparator identified) that Mr Gibson 'maliciously inserted a box mark of '2' on the claimant's SOP (Single Operating Platform) and had downgraded the claimant to a '2'.

31. The Tribunal was taken to the claimant's performance markings from 1/4/2015 to 31/3/2019 and it could be seen that she had only ever been scored a '1' on one occasion. In fact, that was the occasion about which she complained – 31/3/2018. Mr Gibson was taken in evidence to his amendment and in fact he confirmed he has upgraded the claimant from a '2' to a '1' on 5/6/2018 (page 1588). It was pointed out to the claimant that increasing her performance score cannot possibly be a detriment. A score of '2' was consistent will all the claimant's previous scores and it was not a malicious act.

32. On 8/10/2018 the claimant asked Mr Gibson what her mid-year marking was (page 1735). Mr Gibson replied on the 24/10/2018 confirming it was an indicative marking of a '2'. He gave suggestions as to how to raise the mark to a '1'. Mr Gibson said, and the Tribunal accepts that the delay was caused by, him discussing the matter with Ms Bidwell. In cross-

examination, the claimant did not accept that Ms Bidwell and Mr Gibson were best placed to award the box markings[3]; the Tribunal however finds that they were. Mr Supiya sought to make an issue out of the delay, however delay was not an allegation of discrimination. Even if it were, there was no link to the claimant's sex or race and no detriment to the claimant. The claimant replied to Mr Gibson and copied Mr Paine in as he was due to become her SEO (Senior Executive Officer) within the next week and she had an imminent 1-2-1 with him.

33. There was no evidence to suggest Mr Gibson's scorings were less favourable treatment and there was no link to the claimant's race.

34. [2.2.7/allegation 30] This was an allegation of direct race discrimination in that Mr Clack investigated the claimant regarding a charge of gross misconduct. On 23/10/2018 Mr Clack asked the claimant to call him on his mobile telephone for a private conversation from somewhere where the claimant could talk (page 1737). Mr Clack said that he wanted to inform the claimant of the investigation before she received the letter informing her of the same. In as much as the claimant seeks to criticise Mr Clack for taking this approached, it should be noted that she did exactly the same when she was conducting an investigation into AP (page 1008). This is indicative of the claimant's double standards and in her being determined to make every step taken by her line managers into an allegation of discrimination. The Tribunal finds that the line managers were careful and consistent in following their own policies.

35. Although much was made of the investigation and the steps Mr Clack and others took, the respondent merely followed it own policy as a result of the issue raised by the local authority. It seemed to be the claimant's case that there was no need for an investigation as she was able to produce evidence which exonerated her (on her case). The claimant has fatally misunderstood the investigation process. There had to be an investigation in order for her to be able to produce the relevant email, which she relied upon as her having been given authority to tell the relevant local authority it could continue to prosecute the case (page 510). The instruction given to the claimant was based upon a misunderstanding of the facts. The investigation unearthed that the authority the claimant gave was based upon a misunderstanding and as a result and quite rightly, the respondent confirmed there was no case to answer on 2/1/2019 (page 503). On 2/1/2019 Ms Creedon (decision manager) wrote to the claimant:

[3] Box 1 exceptional, 2 good, 3 developing and 4 is poor. 2 is fully meeting objectives (page 1502).

> 'I have carefully considered all the circumstances including emails from the LA, witness statements copies of FRAIM's activities and your statement and have decided that there is no case to answer. No further action will be taken.'

The investigation unearthed the misunderstanding and as a result of that and quite rightly, the respondent withdrew the allegation on 2/1/2019 (page 503).

36. There can be no criticism of Mr Walia for not recalling one email or email string from 2.5 years ago. Furthermore, Mr Walia did not at this time have access to the respondent's case management system. The claimant did not immediately recall the email herself. Had she done so, Mr Clack may have been able to circumvent his investigation and bypass all of the steps he undertook. The Tribunal finds Mr Clack did not make an assumption that the claimant had worked for the local authority or that she knew an employee there. He dealt with that (page 1736). All of the managers involved in the investigation acted correctly. As an allegation, there is really nothing more to say. The investigation was warranted and the claimant has failed to show how it amounted to less favourable treatment because of her race.

37. [2.2.8 and 2.2.9/allegation 31 and 4.1.2/allegation 2] This was an allegation of direct discrimination because of the claimant's race and harassment in that Mr Paine sent a warning email regarding the claimant informing him she was going to see her GP and that Mr Paine said she did not look stressed and she was hiding her high blood pressure well. The sending of the email is also an allegation of race harassment, according to the respondent's claim breakdown.

38. Mr Paine did accidentally send an email to the claimant, intended for Mr Lumsden on 23/10/2018 (page 525). He did 'warn' Mr Lumsden that the claimant was going to see her GP. This was regrettable. It may even have been upsetting for the claimant to realise her line manager was referring to her in such terms. The explanation is however accepted, that Mr Paine was merely alerting Mr Lumsden to the potential staffing/operational problems they would face, as line managers, if the claimant was absent through sickness. In evidence Mr Paine said that due to a move to manage staff on site rather then geographically he needed the claimant at Kennington Park as she had a fraud qualification, whereas Ms Petgrave who dealt with compliance only had a fraud background (she did not have the claimant's qualification). In respect of the comment about her appearance, no reasonable person would find the remark offensive and there was no detriment.

39. There was no link by the claimant to either her race or sex and no comparator. The email did not create the proscribed environment related to race.

40. [2.2.10/allegation 32] This was an allegation of direct discrimination because of the claimant's race that Mr Paine referred in derogatory terms about the staff at Streatham and made racist and homophobic comments.

41. Ms Petgrave was at this meeting and she denied Mr Paine made the comments alleged. Mr Supiya declined to cross-examine her. Mr Paine denied it. Furthermore, the claimant led no evidence on this allegation. The Tribunal finds that it did not happen.

42. [2.2.11/allegation 33] This was an allegation of direct discrimination based upon the claimant's sex, that Mr Gibson was appointed as acting SEO. It is assumed Mr Gibson was the comparator, but it was not expressly stated.

43. Mr Gibson was appointed under the Temporary Duties Addition Assignment (TDA) and in accordance with that policy (page 1492). The Tribunal's attention was drawn to:

> 'To fill a post on TDA for less than 6 months managers can either: select the most appropriate person within the team; choose to run an expression of interest exercise ".

The claimant when giving evidence said that it was not surprising that he had been selected as Mr Gibson had experience of deputising.

44. Other than the fact Mr Gibson is male and the claimant is female and even taking into account subconscious discrimination, the claimant has done nothing more to suggest a difference in sex. The Tribunal accepts the simple case that Mr Gibson was the more suitable person to step up to that role on a temporary basis. There was no less favourable treatment.

45. [2.2.12, 2.2.13, 4.1.26, 4.1.27, 5.2.4 and 5.2.5/allegation 45] An allegation of direct discrimination based upon the claimant's race, harassment (no protected characteristic specified and victimisation in that Ms Crane was overheard on the 17/6/2020 discussing the (second) misconduct proceedings. There is no comparator.

46. The allegation is that Ms Crane said something along the lines of: 'Oh my God, she has misconduct proceedings taken against her with no evidence!' As the respondent submitted, this cannot possibly be a

detriment, or be less favourable treatment and is unrelated to race. If anything, it is a comment showing concern at the claimant's treatment.

47. The allegation is also that Ms Crane discussed the claimant's misconduct proceedings with PM the decision maker on 17/7/2020. Ms Crane said it was likely she was in Acton on that day. The claimant did not set out how this was said to be overheard. Ms Crane recalled a conversation with PM following her meeting with AP on 13/8/2020 and so she called PM on the following day (14/8/2020). Even if Ms Crane did have such a discussion, it is not clear what the detriment to the claimant is.

48. There is no link to race or sex. There is no proscribed environment. The claimant has not suggested how Ms Crane would be aware of her grievance against Mr Gibson on 15/1/2019 so as to result in victimisation.

49. [2.2.14/allegation 46] In the list of issues this simply reads 'the claimant's grievance form'. In the respondent's claim breakdown gives the date as 'general' and said that it was an allegation of direct race discrimination and/or harassment. The description was 'that the claimant's grievance form was direct discrimination and/or harassment'. That is not an allegation which can properly be considered and so it is dismissed.

50. [2.2.15 and 4.1.30/allegation 49] This is the final allegation of direct discrimination and it also an allegation of harassment (no protected characteristic specified) direct discrimination and/or victimisation The list of issues says that the allegation is the respondent's failure to deal with allegations in the claimant's email of 30/9/2020 as a separate grievance. There is no comparator.

51. The claimant sent an email to PS on 30/9/2020 attaching her appeal in respect of the outcomes of grievances 7 and 8 (page 1162). PS acknowledged the email on the same day. At the third attempt the grievance appeal meeting took place on 29/12/2020 (page 1421). The covering email was considered, but in the view of Ms Beard, it did not raise any new or additional allegation although, it was seen by her. It is not clear what the issue/detriment is. In the absence of a comparator, there is no less favourable treatment and no proscribed environment.

52. [4.1.3/allegation 3] An allegation of racial harassment in respect of the timeframe within which the respondent dealt with the claimant's grievance of 14/1/2019. The grievance referred to appears to be the grievance against Mr Clack, which is grievance 2.

53. [4.1.4/allegation 4] The list of issues reads 'the claimant's…'. The respondent's claim breakdown referred to racial harassment that the claimant lodged a grievance against Ms Bidwell and a preliminary hearing was held on 8/4/2019 by WB. It is not clear, but it would appear that the detriment is that the claimant says the grievance being ruled to be out of time. (page 962)

54. [4.1.5/allegation 5] This is an allegation of racial harassment in respect of the grievance against Mr Walia. The detriment appears to be the length of time it took to reach a conclusion.

55. [4.1.6/allegation 6] This is also an allegation of racial harassment in respect of the grievance against Mr Gibson. The same delay point is taken.

56. Taking the preceding four allegations together, there was no extensive delay. The claimant sent five separate grievances against five individuals on 15/1/2019 (page 568). The grievances were substantive and complex. There was an issue of where the grievances would be allocated (which included involving the HR management Investigation Services (HRMIS) and a preliminary investigation. The claimant was absent for some time due to the car accident. The Tribunal is familiar with public sector grievance processes and has seen many examples of protracted processes. That was not however the case in respect of these grievances. It should be remembered that the senior managers involved in investigating grievances, as decision makers and appeal officers, are conducting that process in addition to their substantive role. They have to fit the process in around their existing commitments and those of the others involved (other witnesses for example or annual leave). The claimant has somehow converted (in her mind) delay to collusion. The Tribunal finds there was no collusion and that in fact the opposite was the case. The respondent used managers from outside the claimant's region, including from Aberdeen, Redruth and Scarborough. That was evidence of independence and yet the claimant continued to maintain her allegation.

57. Irrespective of the absence of any delay, the claimant had not demonstrated how the progress of the grievances had any link to a protected characteristic and there was no proscribed environment.

58. [4.1.7/allegation 7] Racial harassment as a result of the claimant's grievances not being considered outside of the CFCD, except for the grievances against Mr Paine.

59. Where in the respondent's organisation the grievances ended up being considered (outwith the claimant's department or not) is not harassment related to the claimant's race. For justifiable reasons, the grievances against Mr Paine were considered by HRMIS. The claimant has not provided any evidence in respect of where the grievances were allocated to suggest there was any link to her race.

60. [4.1.9/allegation 9] Racial harassment in respect of the grievance raised against Mr Paine on 22/5/2019 at which he shouted at the claimant.

61. This was investigated and none of those present at the meeting corroborated the claimant's version of events. Even if Mr Paine did shout at the claimant (it is not accepted he did), the claimant has not discharged the burden to show that it was related to race. In short, the Tribunal finds this event did not happen.

62. [4.1.10 and 4.1.11/allegation 10] Racial harassment in respect of the allegation that Mr Paine snatched a letter out of the claimant's hand and asked her why she was going there [to see the cardiologist].

63. Similarly, the evidence points to this allegation also not taking place. If it did (which is not accepted), the claimant has not shown how it is related to her race.

64. [4.1.12/allegation 11] Racial harassment when Mr Paine told the claimant at a meeting in Twickenham on 24/6/2019 that 'staff are taking the piss out of you'.

65. The Tribunal accepted Mr Paine's evidence that he asked the claimant if a member of staff was 'taking the piss' and that he did not refer to someone 'taking the piss' out of the claimant herself. Mr Paine gave evidence that the reference was to an individual's performance and knowing what they needed to do. He said that (a) they were either taking the piss, or (b) needed support. Even if he did use the phrase in the way suggested by the claimant, it was not related to race. The claimant has never said she was offended by the use of the expletive.

66. [4.1.13-4.1.16/allegations 12-20] are all allegations of harassment related to race in respect of actions which Mr Paine took once the claimant was on sickness absence from 4/7/2019. Specifically:

> 4.1.13 Mr Paine's contact with the claimant during her period of sickness absence;

4.1.14 Mr Paine dissuading the claimant from returning to work on 31/7/2019;

4.1.15 Mr Paine sent a text message to the claimant on 8/8/2019 informing her that she had taken 30 days off sickness leave and would need to attend a meeting; and

4.1.16 Ms Frawley's alleged failure to address the claimant's complaints of 9/2019 about Mr Paine's action while she was on sickness leave.

67. On 3/7/2019 the claimant was involved in a road traffic accident. Mr Paine contacted the claimant for an update on her condition via a text message to her work mobile and requested weekly contact.

68. The Attending Management Procedures policy (page 1471) states that a line manager 'must keep in regular, appropriate contact'. The Tribunal's attention was drawn to paragraphs 10 and 11 which state that 'for 8 consecutive days or more, the employee must provide a '"Fit note" from their GP' to the line manager as soon as possible.

69. There were text messages between Mr Paine and the claimant (pages 1557-1563). The claimant said that the text messages started on 15/7/2019 (the 12th day of her sickness absence) and this was the day Mr Paine returned from annual leave. The claimant told Mr Paine that she had a GP appointment on 16/7/2019, that she had had an allergic reaction to a wasp sting and had been receiving hospital treatment. It was agreed that the claimant would ring Mr Paine after receipt of the medical certificate. It was also agreed that Mr Paine would text the claimant rather than sending emails, so she did not have to access her laptop.

70. On 18/7/2019 at 22.30 (page 1565) the claimant requested to attend a one day face-to-face MHT Training event. Mr Paine was concerned that the claimant would not be fit enough to return to work, would need to drive to the training event and that there were still some concerns about the claimant's ankles. The drive would be longer than to her normal place of work at Kennington Park and the claimant's replacement car did not have the specification her previous car and it did not have the lumbar support. The training would take place during the 6-weeks the medical certificate covered the claimant's absence from work, however Mr Paine was content to discuss (page 1564).

71. The claimant conceded in cross-examination that the text messages were legitimate contact, that the request for a fit note on 15/7/2019 was proper,

she said in isolation the frequency of text messages was okay but not with the constant phone calls and emails (there was no additional evidence of the phone calls and emails). Furthermore she agreed that Mr Paine followed the Policy. The claimant said that Mr Paine was overzealous and he was in 'too much contact' (yet another allegation was that she was not offered support).

72. The claimant did not return to the workplace until 15/8/2019. She stated that she was dissuaded from attending work by Mr Paine when her medical certificate ran out on 31/7/2019. The Tribunal observes that the claimant had been signed off for 6 weeks and therefore it would have been unlikely that she would return at the end of July 2019. The fit note stated the claimant saw her GP on 2/8/2019 and the GP stated the claimant is not fit for work due to 'lower back pain and ankle' for two weeks (page 1568).

73. Via a text message the claimant responded to Mr Paine: 'Hi Mark I called them yesterday as my certificate expired yesterday [31/7/2019] and was told I need to come in any day from today onwards to get a repeat med cert which I will do this week. I am still in pain and having physio and have consultant appointment on 9 August. My aim is to return on 15 August or there about' (page 1560).

74. Mr Paine responded: 'Thanks Sue, I will send you an invite for a 28 day review that we can do by phone...' (page 1561).

75. The policy provides (page 1475):

> 'Formal action for continuous, long-term absences
>
> 46. Absence is long-term once it reaches 28 consecutive calendar days. The purpose of long-term sickness action is to get the employee back to work within a reasonable period of time giving them the help and support they need to return.
>
> Meetings during continuous sickness absence
> 48. After 14 consecutive days the manager must arrange a keep in touch discussion with the employee to explore the support needed to help the employee return to work. If the absence continues beyond 28 days it is important to have regular formal review meetings, normally on a monthly basis, to explore the support

> needed, but also to consider whether the employee is likely to return within a reasonable time frame.'

76. Mr Paine's evidence was that as the claimant had been absent from the office since 4/7/2019 she reached her 28 days on 1/8/2019 and under the policy her sickness absence was long-term. The 28 day review meeting was scheduled by Mr Paine for 12/8/2019 but the claimant declined to attend as this was her non-working day. The claimant had said she would send a copy of her fitness for work certificate to Mr Paine once she received it.

77. Mr Paine gave evidence that he would have followed the same absence policy for any sickness absences for any member of his team.

78. Ms Frawley was the Investigating Officer for grievances 1 and 6 against Mr Paine. She received an email from the claimant on 9/8/2019 stating (page 648):

> 'These are the types of things Mark is doing he sent me a letter for a formal interview with a note taker for Monday 12th.
>
> Knowing I was returning to work on the 15th August.
>
> More importantly due to weekends and non working days at the time of my return I will be on 24 days absence so formal action not appropriate or appreciated.'

79. Ms Frawley acknowledged the email and said it would remain on file, as it did not relate to any of the grievances she was dealing with, she took it no further and she did not hear anything further in response from the claimant. In her view, Mr Paine had acted wholly in line with the policy.

80. It is not open to the claimant to unilaterally contend for an interpretation of the respondent's policy, when it is clear and unambiguous and is simply being followed/applied.

81. Mr Sivadasan did the return to work meeting on 15/8/2019 and the claimant has not complained about this (page 1570).

82. The respondent has simply followed its policy and the Tribunal finds there is nothing untoward in that. The claimant has, again, failed to demonstration how this is related to race, failed to show any detriment and failed to set out how this amounted to a proscribed environment.

83. [4.1.17/allegation 21, 5.2.2/allegation 35 and 6.1/allegation 38] Racial harassment, victimisation and breach of contract in respect of the claimant's redeployment to Walthamstow.

84. The claimant's contract contained a mobility clause (page 451). The clause states that the claimant may be moved to any place of employment in the local authority's service as may be required. The claimant seeks to read into that clause an implied term that she will only be moved to a location within that local authority. There is no need to read into the clause such an implied term. The local authority could if it wished to, have limited the clause to the geographical area of the particular local authority, but it chose not to do so. The respondent therefore had the contractual right to move the claimant to any reasonable location. Furthermore, the claimant had requested that she be moved from Mr Paine's line management and this move was agreed with PS and it was nearer to her home. There was no detriment.

85. There was no breach of contract and it was not harassment related to race. A move which the claimant instigated and accepted cannot be victimisation. This is one example of the claimant's disingenuous attempts to rely upon matters which at the time she accepted or was agreeable to; and now seeks to claim it is an allegation of unlawful discrimination. In the appeal meeting with Mr Kane on 5/12/2019 the claimant said: 'I would like to stay at Walthamstow as my health is better and I am happy with [the/my] SEO' (page 939).

86. [4.1.18/allegation 22] Racial harassment in respect of an email Mr Paine sent on 15/8/2019 (page 801).

87. There was no breach of privacy as alleged by the claimant. All Mr Paine did was to send an email updating the claimant's colleagues regarding the accident she had been in (of which they were aware in any event) and to confirm that she had relocated to Walthamstow (page 801). There was nothing untoward about this. In fact, it had become necessary to send such an email as the claimant had made derogatory comments about Mr Paine to a colleague two days earlier (page 1456). Mr Paine became aware of a rumour that he had 'got rid of' the claimant and so he addressed that rumour. An unconnected colleague KW was unfortunately and unnecessarily copied in; however, that was due to simple human error and the Tribunal accepts that the autofill function populated the wrong email address. Yes, the claimant could have been copied into the email; however, she was on the point of returning from sickness absence at the time and one of her allegations is that Mr Paine was harassing her by sending her emails, calling her and texting her. Whatever the respondent

did or did not do resulted in the claimant making allegations of discrimination.

88. There was no proscribed environment related to the claimant's race.

89. [4.1.19/allegation 23] Racial harassment that the claimant's appeal was heard and dismissed by letter dated 12/1/2020 by Mr Kane (page 953).

90. It is not clear what the detriment was. The claimant appealed the decision of Mr Unwin to Mr Kane on 19/11/2019. The Tribunal was taken to the notes of the appeal meeting at which Mr Kane provided his outcome to the claimant on 12/1/2020 (page 930). There was no delay. Mr Kane explained his circumstances. If the complaint is the outcome of the appeal (Mr Kane's dismissal of the appeal), then the Tribunal finds that it was thoroughly dealt with and the outcome was a reasonable one Mr Kane was entitled to reach. Mr Kane reiterated that it was not his role to 'rehear' the evidence. He said he was not dismissive, but that his role when he received the investigating officer's decision was to ensure it was a reasonable one at the time they made their decision. He considered all the evidence related to the grievance as set out by the claimant. A lot of the information the claimant gave him repeated what he had seen from the evidence.

91. There was no link in the allegation to the claimant's race and no proscribed environment related to her race.

92. [4.1.20/allegation 39
4.1.21/allegations 40 and 47
4.1.22/allegations 41 and 47
4.1.28/allegation 46]

All pleaded as harassment (no protected characteristic specified), with the time-frame given as 'general' with no specificity to the allegations. Not only does the Tribunal not understand these allegations, there are also no particulars for the respondent to answer and therefore the burden of proof cannot possibly transfer to the respondent. These allegations are dismissed for that reason.

93. [4.1.23/allegation 42] Harassment (no protected characteristic specified) in that on 27/2/2020 Ms Cooke informed the claimant she had been instructed to uphold the findings of Ms Frawley by the complex case team HR.

94. Ms Cooke sought advice from the Civil Service HR Casework Team (pages 708-706) on two occasions before she met the claimant. It was clear from that advice that it was for Ms Cooke alone to make her decision based upon the reports she had received from Ms Frawley. That was also clear from the outcome letter dated 2/3/2020 (page 711). The claimant has completely misinterpreted the advice given to Ms Cooke and her interpretation is rejected.

95. There was no proscribed environment related to race or sex.

96. [4.1.24/allegation 43] Harassment (no protected characteristic specified) in that the invitation letter of 14/5/2020 presumed the claimant was guilt of the alleged misconduct.

97. During cross-examination the respondent established the letter sent on 14/5/2020 was a standard template. There was a template informing the employee of an investigation and a second one inviting the employee to a meeting (pages 1592 and 1955).

98. A manager correctly using the respondent's templates cannot amount to harassment based upon either protected characteristic.

99. [4.1.25/allegation 44] Harassment (no protected characteristic specified) in that Mr Brill's conduct of the appeal was somehow detrimental.

100. The claimant relied upon three sub-allegations. Mr Brill said that he found Ms Cooke's decision to be reasonable and the additional allegations did not add anything substantial. That HR watered-down the advice and it was not tested during the hearing. Finally, that Mr Brill was selective in the evidence used. Mr Brill said he reached his decision to uphold the appeal on five grounds, which were clearly set out in his outcome letter of 17/6/2020 (page 814).

101. The fact that the claimant disagrees with the grievance and appeal outcomes is not in dispute. That does not however mean that the outcome was harassment contrary to s.26 EQA based upon the protected characteristic of race or sex.

102. [4.1.29/allegation 48] Harassment (no protected characteristic specified) in that Ms Crane in questioning required the claimant to prove her case.

103. Ms Crane investigated the claimant's grievances number 7 and 8. She sought advice from HR before interviewing the claimant. It is not

clear exactly what it is the claimant complains of here. There was nothing improper in the manner in which Ms Crane conducted the grievance and she was entitled to question and even test the claimant during the interview.

104. Questioning the claimant about a grievance she has raised, is not harassment based upon an unspecified characteristic.

105. [4.1.31/allegation 51[4]] Harassment (no protected characteristic specified) in that on 24/11/2020 Ms Beard incorrectly stated that the claimant had requested that the claim be dealt with outside of the region, which the claimant says showed that Ms Beard had discussed the case with someone else.

106. Even if Ms Beard had discussed the case with someone else, the Tribunal is at a loss as to how that can be suggested to be an act of harassment related to either sex or race. Ms Beard was not operating in a vacuum; she was not in the same region as the claimant (therefore there would be no need for her to discuss that aspect) and the appeal had to have found its way to her via someone else. It follows therefore that Ms Beard did discuss the case and there is nothing untoward in that.

107. It is not clear what the detriment to the claimant was and there is nothing to suggest it was harassment either related to sex or race.

108. [4.1.32 and 5.2.7/allegation 52] Harassment (no protected characteristic specified) and/or victimisation in that during the meeting on 29/12/2020 Ms Beard made reference to the claimant's claim to the Tribunal.

109. This was another nonsensical allegation. The claimant referred, in her appeal to 'legal action against the department' (page 1379). During the appeal meeting, Ms Beard asked the claimant what that referred to and if it was an Employment Tribunal claim for 'racial action' and the claimant confirmed it was. If the claimant had not mentioned legal action, Ms Beard would have had no reason to raise it.

110. The claimant has failed to show how this is harassment related to either protected characteristic of sex or race. Furthermore, she has led no evidence that Ms Beard was aware of the protected act/her grievance against Mr Gibson or, that there was any detriment in Ms Beard clarifying a matter in a meeting (which was the purpose of the meeting) first raised by the claimant as part of her appeal.

[4] There is no allegation 50 on page 188.

111. The claimant also claims victimisation. The two protected acts she relies upon are:

a. her grievance raised against Mr Paine [cross-referenced as allegation 34]; and
b. her grievance raised against Mr Gibson [cross-referenced as allegation 35]

112. The respondent concedes that the grievance raised against Mr Gibson was a protected act, whereas the one against Mr Paine was not. The Tribunal agrees with that analysis. The grievance against Mr Gibson did refer to, at (page 856):

> 'sustained bullying and Harassment at work, and Victimisation…'

It went onto refer to (page 860):

> 'the victimisation, Harassment, Snide and Racial comments…'

113. Although the Tribunal notes the capitalisation of the words Harassment and Victimisation, it also observes that the word 'snide' was capitalised. The claimant however did refer to 'Racial comments' and in view of that, the Tribunal agrees with the respondent that the grievance was a protected act.

114. The Tribunal also agrees with the respondent and finds that the grievance against Mr Paine was not a protected act.

115. It is not in dispute that the date the claimant presented her grievance against Mr Gibson was the 15/1/2019. It is clear that the claimant drafted her grievance prior to that, as it is dated 16/11/2018 (page 864). That does not however assist the claimant as the respondent could not have become aware of the protected act until the 15/1/2019.

116. The result of that finding is that the claimant's allegations of victimisation which pre-date the protected act, cannot as a matter of law amount to the same. Therefore the decision to investigate the claimant on 23/10/2018 cannot be a detriment as a result of doing a protected act [5.2.1/allegation 34].

117. [5.2.3/allegation 36] It is alleged that it was an act of victimisation that the claimant's grievances and appeals were handled unfairly. There are findings elsewhere about the integrity of the grievance and appeal

processes. As an allegation it is not upheld that the grievances and appeals were handled unfairly. As an act of detriment for a claim under s.27 EQA, it is too vague to be responded to and to be considered.

The Law

118. The claimant claims the protected characteristic of race s.9 and sex s.11 EQA.

119. The prohibited conduct of which she complains is direct discrimination s.13 EQA, harassment s.26 EQA and victimisation s.27 EQA.

120. The complaint is of a detriment s. 39(2)(d) and s. 40 EQA.

121. S.13(1) of the EQA states:

> A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.

122. To succeed with a claim for direct discrimination, a claimant must show:

> a. that she has suffered a detriment;
>
> b. that in suffering that detriment she has been treated less favourably than a real or hypothetical comparator; and
>
> c. that she has suffered that less favourable treatment because of a protected characteristic.

123. If it is found that a claimant has been treated less favourably than a comparator, the Tribunal must determine whether that was because of the claimant's protected characteristic or for an unrelated reason.

124. To establish that the treatment was because of a protected characteristic it must be shown that a named individual (or a number of individuals) who subjected the claimant to a detriment was consciously or subconsciously influenced by the protected characteristic. Unless the claimant identifies the alleged discriminator(s), that exercise cannot be conducted and the claim will fail Reynolds v CLFIS (UK) Ltd [2015] IRLR 562.

125. S. 23 EQA provides:

Comparison by reference to circumstances

(1) On a comparison of cases for the purposes of section 13, 14, or 19 there must be no material difference between the circumstances relating to each case.

126. The burden of proof in s.136 EQA provides that if there are facts from which the court could decide, in the absence of any other explanation, that a person contravened the provision concerned, the court must hold that the contravention occurred.

127. In Igen Ltd v Wong [2005] ICR 931, the Court of Appeal gave practical guidance to Tribunals on applying the shifting burden of proof.

128. The burden of proof does not shift to the respondent unless the claimant has raised facts from which the tribunal could conclude, in the absence of an adequate explanation, that the respondent committed an unlawful act of discrimination. In Madarassy v Nomura International plc [2007] IRLR 246, the Court of Appeal made clear that:

> The court in Igen v Wong expressly rejected the argument that it was sufficient for the complainant simply to prove facts from which the tribunal could conclude that the respondent 'could have' committed an unlawful act of discrimination. The bare facts of a difference of status and a difference in treatment only indicate a possibility of discrimination. They are not, without more, sufficient material from which a tribunal 'could conclude' that, on the balance of probabilities, the respondent had committed an unlawful act of discrimination.

129. It has been stated repeatedly in the authorities, including Commissioner of the Police of the Metropolis v Osinaike (UKEAT/0373/09), para.47, that ‘simply showing that conduct is unreasonable or unfair is not, by itself, enough to trigger the transfer of the burden of proof’.

130. Harassment, Section 26(1) of the EQA provides:

(1) A person (A) harasses another (B) if—

(a) A engages in unwanted conduct related to a relevant protected characteristic, and

(b) the conduct has the purpose or effect of—

(i) violating B's dignity, or

(ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.

131. The claimant must therefore show:

a. unwanted conduct;

b. that has the proscribed purpose or effect;

c. which relates to a relevant protected characteristic.

132. In Richmond Pharmacology v Dhaliwal UKEAT/0458/08/EC the EAT said:

'We accept that not every racially slanted adverse comment or conduct may constitute the violation of a person's dignity. Dignity is not necessarily violated by things said or done which are trivial or transitory, particularly if it should have been clear that any offence was unintended. While it is very important that employers, and tribunals, are sensitive to the hurt that can be caused by racially offensive comments or conduct (or indeed comments or conduct on other grounds covered by the cognate legislation to which we have referred), it is also important not to encourage a culture of hypersensitivity or the imposition of legal liability in respect of every unfortunate phrase.'

133. Trivial acts will not constitute harassment and in considering whether any such harassment related to a protected characteristic context is all important (Henderson v GMB [2015] IRLR 451)

134. The harassment need not be 'because of' the protected characteristic but the question of whether it is related to the protected characteristic is objective (Hartley v Foreign and Commonwealth Office Services UKEAT/0033/15).

135. Victimisation, Section 27 of the EQA provides:

(1) A person (A) victimises another person (B) if A subjects B to a detriment because—

(a) B does a protected act, or

> (b) A believes that B has done, or may do, a protected act.
>
> (2) Each of the following is a protected act—
>
> (a) bringing proceedings under this Act;
>
> (b) giving evidence or information in connection with proceedings under this Act;
>
> (c) doing any other thing for the purposes of or in connection with this Act;
>
> (d) making an allegation (whether or not express) that A or another person has contravened this Act.
>
> (3) Giving false evidence or information, or making a false allegation, is not a protected act if the evidence or information is given, or the allegation is made, in bad faith.
>
> (4) This section applies only where the person subjected to a detriment is an individual.
>
> (5) The reference to contravening this Act includes a reference to committing a breach of an equality clause or rule.

136. Therefore, it is unlawful to victimise a worker because she has done a 'protected act'. In other words, a worker must not be punished because she has complained about discrimination in one or other of the ways identified under s.27 EQA, although the action which is claimed as the protected act, does have to come within s.27(2) EQA.

Conclusions

137. In respect of limitation, any allegations which took place prior to: 18/2/2019 in respect of the first claim; 21/10/2019 in the second; and 17/12/2020 in respect of the third claim are out of time. The claimant did not seek to persuade the Tribunal to exercise its discretion to extend the time limit or in the alternative, that these were continuing acts. As Ms Brown submitted, the allegations were against a wide range of employees of the respondent (the Tribunal counted at least 19) from all parts of Great

Britain. Apart from the claimant's unfounded allegations of collusion, there was nothing to link the disparate and dispersed group of people involved in responding to the claimant's grievances and appeals to find there was a continuing act. The Tribunal therefore adopts the respondent's position that allegations 2-7, 9-22, 25-35, 31-33, 35-36 and 38-51 are out of time.

138. In the absence of an express invitation to consider the allegations were a continuing act, the Tribunal examined forensically and individually the allegations and could did not find them to be a continuing act.

139. In the alternative, the claimant has not established facts from which the Tribunal could decide, in the absence of any other explanation, that the contravention has occurred per s.136 EQA. The claimant has not provided any evidence that any allegation was because of her race or sex, was related to her race or sex or that there was a detriment as a result of her doing a protect act. The burden of proof did not pass to the respondent.

140. The respondent's simple and non-discriminatory factual explanation was accepted in respect of each and every allegation. As an example, the claimant should have accepted that she was not entitled to a long-service certificate and should have withdrawn that allegation. There was also the sickness absence policy, which was clear and was properly applied to the claimant. It was not open to the claimant to attempt to unilaterally interpret the policy in a way which suited her purposes; which was contrary to the actual content of the policy. It was raised on the first morning of the hearing whether or not the claimant had or wished to withdraw any allegation. She did withdraw her indirect discrimination claim and four other allegations. It was however an abuse of process for her to continue to maintain allegations which were legally and factually doomed to fail.

141. The claimant was not a litigant in person. She was represented by her Trade Union throughout (either Mr Supiya or Mr Morris) and was represented at the majority of the many meetings. At one meeting Mr Supiya was not present, but the claimant agreed to go ahead.

142. Ms Brown started her submissions by referencing Madarassy v Nomura International plc and said there was nothing to shift the burden to the respondent, that analysis applied to every allegation and that was fatal to the claimant's claims. She went onto say that the case was nothing whatsoever to do with race. The claimant's complaints about what she perceived to be unfair treatment, whether or not that was right, should not be put as a discrimination claim.

143. The Tribunal agreed with that analysis and find this was a classic Madarassy case, there was a complete absence of the 'something more'. The Tribunal was prepared to give the claimant the benefit of the doubt as to the motivation behind her bringing these claims and was prepared to accept that she genuinely believed she had been the subject of unlawful discrimination, although it had concerns from the outset. That view changed however as the evidence began to emerge. Mr Supiya attempted to put inappropriate questions to the witnesses, in particular Mr Gibson and Mr Walia which was designed to embarrass them. Prior to the questions starting, the Tribunal explained that it understood that the claimant and Mr Supiya would have many matters which they wished to put to the witnesses, but that the Tribunal was only interested in hearing evidence regarding the matters it had to determine. The Tribunal was prepared to allow Mr Supiya to use the time he had as he saw fit and if he wished to put questions about irrelevant matters, then sobeit. That said, Mr Supiya would not be permitted to put inappropriate or offensive questions to the witnesses; when he attempted to do that, he was stopped.

144. The issue which really confirmed for the Tribunal that this case and the conduct of it was a 'fishing expedition' to obtain ammunition to discredit the respondent's witnesses. Not only was the application to amend of the 18/3/2022 totally inappropriate in terms of the timing of it (Mr Supiya had referred to basis for that application in correspondence as far back as July 2021) and the fact that the relevant witness' evidence had concluded; it confirmed to the Tribunal that the purpose of this legislation was to malign and disparage long-serving officers of the respondent, in a public hearing. That the Tribunal did not allow that to happen, does not negate the fact that it was the claimant's intention. That was totally inappropriate and gratuitous.

145. That being said, the claimant remains in the respondent's employ and along with many others, is a long-serving employee. She has made serious allegations of racial and sexual discrimination against her superiors, which the Tribunal has found to be unwarranted. The claimant and was not prepared to even listen to, never mind accept a non-discriminatory explanation for the matters about which she complained. She raised eight grievances, which were thoroughly investigated. She appealed the outcome and again, the appeals were thoroughly and diligently considered. She had made spurious and inappropriate allegations against a number of the respondent's employees. The claimant will have to go some way to re-building relationships with those she has accused, otherwise her working life will become unbearable and this is a significant consideration which the claimant must take on board.

146. The claimant has previously rejected the offer of workplace mediation and the Tribunal urges her to reconsider this.

147. For those reasons, the claimant's claim fails in its entirety and are dismissed.

14 October 2022

Employment Judge Wright